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RESEARCH REPORT

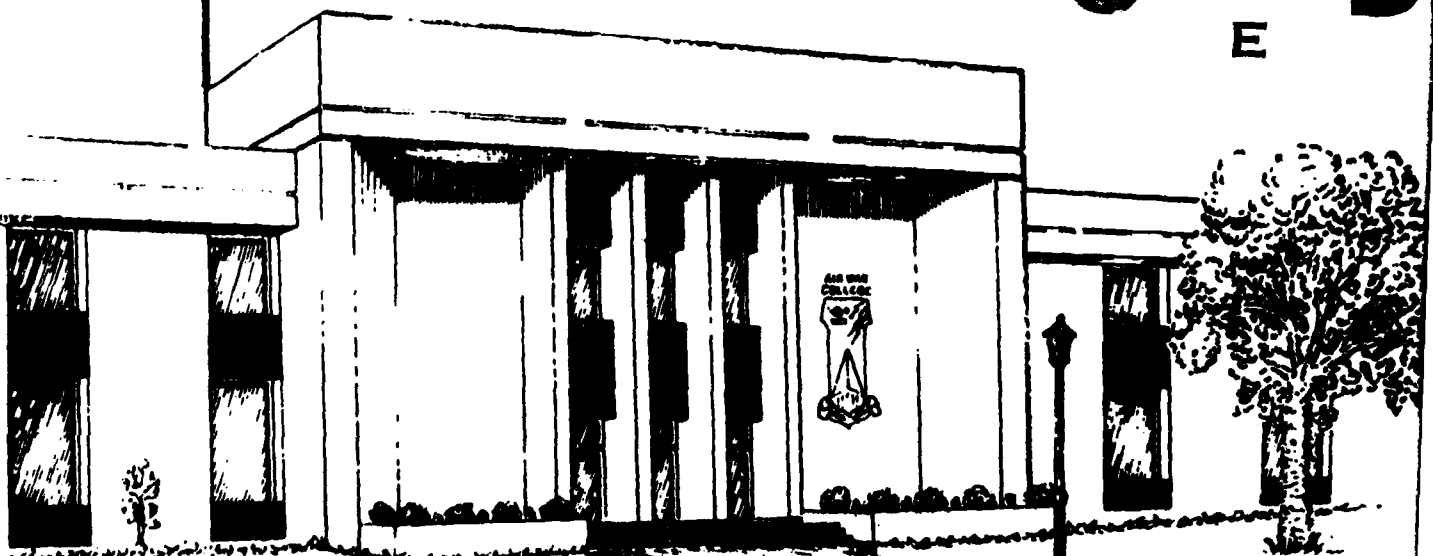
U.S. COUNTERINTELLIGENCE: FROM THE YEAR OF
INTELLIGENCE TO THE YEAR OF THE SPY
AND POISED FOR THE FUTURE

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U. S. COUNTERINTELLIGENCE: FROM THE YEAR OF INTELLIGENCE
TO THE YEAR OF THE SPY AND POISED FOR THE FUTURE

BY

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A RESEARCH REPORT SUBMITTED TO THE FACULTY
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REQUIREMENT

Research Advisor: Mr Neil Huntley

MAXWELL AIR FORCE BASE, ALABAMA

1988

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AIR WAR COLLEGE RESEARCH REPORT ABSTRACT

TITLE: U.S. Counterintelligence: From the Year of Intelli-
to the Year of the Spy and Poised for the Future.

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▷ This paper analyses the present state of U.S. Counterintelligence in the aftermath of the John Walker Family espionage case and the rash of espionage cases which led to the "Year of the Spy". A description of the history of Congressional/ Executive Branch interaction on US Counterintelligence is used as a framework for developing the author's view that effective cooperation between these often competing branches of government has resulted in significant improvements in CI capability. While the public view of the "Year of the Spy:" was essentially negative, the reality was that the "Year" reflected a budding US Counterintelligence Community that grew steadily in capability as well as in public acceptance as an integral function of the US security apparatus.



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BIOGRAPHICAL SKETCH

Lieutenant Colonel Francis X. Taylor (B.A., M.A., University of Notre Dame) has been involved in U.S. counterintelligence activities since entering Active Duty with the Air Force in 1970. He has held both field and Headquarters counterintelligence assignments with the Air Force Office of Special Investigations. Recently, he completed a tour in the Office of the Under Secretary of Defense for Policy where he was responsible for policy formulation and operational oversight of all DoD counterintelligence activities worldwide. He is a graduate of the Armed Force Staff College, Norfolk, VA, where his paper on political developments in South Africa was graded "Distinguished." Lieutenant Colonel Taylor is a graduate of the Air War College, Class of 1988.

TABLE OF CONTENTS

CHAPTER		PAGE
	DISCLAIMER.	ii
	ABSTRACT.	iii
	BIOGRAPHICAL SKETCH.	iv
I	INTRODUCTION.	1
II	YEAR OF THE SPY	5
III	WHAT IS COUNTERINTELLIGENCE	11
IV	THE INTELLIGENCE THREAT	16
V	COUNTERINTELLIGENCE IN A DEMOCRACY.	20
VI	ERA OF TRUST	27
VII	ERA OF SKEPTICISM	34
VIII	ERA OF UNEASY PARTNERSHIP	43
IX	CONCLUSIONS	55
X	BIBLIOGRAPHY.	59
XI	NOTES	63

INTRODUCTION

We should begin by recognizing that spying is a fact of life ...(But) we can counter this hostile threat and still remain true to our values. We do not need to fight repression by becoming repressive ourselves...but we need to put our cleverness and determination to work, and we need to deal severely with those who betray our country...There is no quick fix to this problem. Without hysteria and fingerpointing, let us move calmly and deliberately together to protect freedom.

RONALD W. REAGAN
June 29, 1985

This quote was taken from President Reagan's weekly radio address to the nation. The address was delivered some 40 days after the arrest of John A. Walker, a retired Navy Chief Radioman, by the Federal Bureau of Investigations (FBI) on charges of espionage. Walker was arrested after FBI agents observed him leave a bag containing classified information for later pick-up by an officer of the Soviet Intelligence Service. The investigation of Walker and his arrest also began a chain of related and unrelated arrests and exposes concerning foreign directed espionage in America which cumulatively led to 1985 and 1986 being unceremoniously labeled the "Year of the Spy." Although neither President Reagan nor any of his advisors could have foreseen the events of the weeks and months following Walker's arrest, his statement was prophetic in that it captured the essence of the three most important issues associated with the Walker Case and the "Year of the Spy."

The first issue is that spying is a fact of life in the relationship among the nations of the world and that no one should be surprised that it is occurring. The second issue is the fact that there is a significant hostile intelligence threat to the national security of the United States that we must be concerned with. Finally, and arguably most important, the third issue is that a free and democratic nation can, indeed must, protect itself from intelligence threats to its national security without fundamentally altering or limiting the values and freedoms basic to its existence as a democracy. Underlying the latter issue is the need to build an effective capability to counter the foreign intelligence threat while protecting the basic freedoms guaranteed in our democracy.

While the first two issues are extremely important, it is issue three that is the focus of this paper, namely, how effective is US counterintelligence in performing its mission and why. I do not mean to degrade, in any way, the significance of the Walker spy case or the severe implications for national security of the large numbers of US citizens arrested for espionage. Each and every espionage case is serious. The Walker case, in the opinion of most knowledgeable observers, was probably the most significant Soviet espionage operation against the US in more than a

generation. The impact of that case on national security was extremely grave and its full implications may never be determined, in spite of cooperation given US authorities by the culprits.

Focusing on individual cases or groups of cases; however, fails to address how effectively the US is prepared to provide the requisite counterintelligence capability to protect itself from espionage. As indicated by the President in his statement, the answer to that question lies in how well our government has organized its counterintelligence resources, policies and capabilities to manage the tension between the protection of national security and the rights and freedoms of individual citizens. In our system of government, that tension is most effectively managed in dialogue, cooperation and compromise between the President and the Congress. This relationship is that envisioned by the framers of our Constitution with the separation of powers between our branches of government.

The nature of the relationship between the President and the Congress on issues of counterintelligence has had a direct influence on the capability of US counterintelligence to perform its mission effectively while maintaining the required balance in a democracy between the needs

of national security and the rights of individual citizens. When that dialogue and cooperation have broken down, the result has been disastrous in terms of US CI capability as well as the protection of the individual rights of US citizens. When that partnership has been effective, the result has been quite the opposite.

This paper will analyse the impact on US counterintelligence capability of the tension between the Executive and the Legislative Branches in developing national security policy and programs. The paper will demonstrate the negative impact on both CI capability and individual rights when the relationship is ineffective and the benefits that can be derived from an effective partnership. The events of the Walker case and the "Year of the Spy" notwithstanding, the US counterintelligence capability if today is a direct result of improved cooperation, dialogue and consensus between the Executive Branch and the Congress. The cooperation currently evident, bodes well for continued effective US CI capability well into the future.

"YEAR OF THE SPY"

On May 21, 1985, retired US Navy Chief Radioman John A. Walker was arrested by the FBI after leaving a bag of classified information at a "drop" site in suburban Washington DC. Walker was spy for the Soviet KGB (Committee for State Security) and had been working for them for at almost 20 years, according to court documents filed by the FBI after his arrest. In 1968, Walker apparently volunteered his services while assigned to the staff of the Commander, Atlantic Submarine Fleet, Norfolk Virginia. During the course of his espionage activities, Walker recruited his brother; a retired US Navy Commander; his son, a Navy enlisted man; and a long-time friend who was also a retired US Navy Chief Radioman. The arrest of Walker and his accomplices culminated the longest and most damaging Soviet intelligence operation against the US in more than a generation. Although much of the information concerning the damage to national security by this ring must necessarily remain classified, it is clear that the ring's efforts caused grave damage to US national security by compromising Navy secure communications codes as well as in formation on US fleet and strategic submarine movements and operations. (37)

Had the "Walker Family" espionage case occurred alone,

it would have created the intelligence story of a generation. It did that and more. It ushered in a period from May 1985 to May 1986 when an unprecedented number of Americans were arrested on charges of espionage. During that period, it seemed that no US Government agency was immune from espionage and that the sponsoring nations were so diverse that the intelligence attack against our nation appeared to be coming from all angles. In addition to the Walker's, those arrested included: Ronald Pelton, a former employee of the National Security Agency who compromised sensitive NSA intelligence collection activities to the Soviets; Larry Wu-Tai Chin, a retired CIA employee who had worked for the People's Republic of China Intelligence for almost 30 years; Jonathan Pollard, a Naval Security and Investigative Command Intelligence analyst who worked for Israeli Intelligence; Sharon Scranage, a CIA employee who betrayed the identities of CIA agents to Ghanian Intelligence; Richard Miller, an FBI Agent who had an affair with a Soviet Agent; and Edward Howard, a fired CIA officer who compromised sensitive CIA operations in Moscow. (7:5-6) In all, more than 12 people were arrested and charged with espionage in 1985 and 1986.

The arrests and general public furor over the damage to national security from Soviet and Warsaw Pact Intel-

ligence services collectively caught the public and the media by surprise and resulted in the period being dubbed the "Year of the Spy." This period clearly demonstrated the damage that foreign espionage had done to US military operations and capabilities as well as sensitive US intelligence operations. It also focused the attention of the Executive Branch, the Congress and the American people on the capabilities, or lack thereof, of US counterintelligence to prevent espionage. This focus became even more intense as each new espionage case came to public light and the reality of the hostile intelligence threat to our national security became more evident.

Karl Justus, writing in Officer Review described a typical layman's reaction to the 'Year of the Spy' as leaving him with "questions and much wonderment." Questions because several of our friends (Israel, China, Ghana) were conducting espionage against us and wonderment at how Larry Chin could spy for 30 years and John Walker for almost 20 and both go undetected. The rhetorical question he asks was also typical: "What happened to US counterintelligence." (23:6-9)

The answer to Mr Justus' rhetorical question is not an easy one -- although some would offer simple solutions. Both sides of the debate would tie their answer to events

stemming from the 1975-1976 "Year of Intelligence", when allegations and revelations of abuses of power and authority in the US intelligence community led to unprecedented public and Congressional scrutiny of the US intelligence apparatus. That scrutiny resulted in significant legislative action to reform and enhance Congressional oversight of US intelligence with a view toward improving intelligence capability while precluding the documented abuses of the past. In answering the question, some argue that the post-Watergate and other reforms of the intelligence community in the mid-1970's have so shackled US counterintelligence that the country has been dangerously exposed to espionage and potentially grave damage to national security. Conversely, others argue that the reforms of the 1970's are unrelated to the events of the "Year of the Spy." As is often the case, the truth is normally found in the middle ground -- US counterintelligence capability was profoundly and negatively affected by the events of the mid-1970's, but not as negatively as some would have us believe. In fact, it is because of increased Congressional involvement in issues regarding US intelligence and counterintelligence capabilities, plans and operations that a unique partnership has developed between the Executive and Legislative Branches. This partnership has allowed these

two traditional protagonists on issues of control of the national security policy process to effectively manage their inherent tensions and develop policies, laws and strategies that have demonstrably improved the capabilities of US counterintelligence to detect and prevent espionage against the US while protecting the basic freedoms and rights of the American people.

Far from destroying US counterintelligence capability, legislative involvement in partnership with the Executive Branch has served to significantly improve that capability. Counterintelligence, like other national security problems, frequently comes in conflict with the rights and privileges enjoyed by Americans. Legislative oversight provides a legal basis for day to day routine CI operations as they affect US citizens -- limits of action are prescribed and agencies can act confidently within those limits without fear of unwarranted censure. Further, when conflict has occurred between the needs of national security and the rights of citizens, the Congress as representatives of the people, has helped to resolve these issues on grounds mutually beneficial to individual rights and the needs of the nation. The developing partnership and the growing trust and sense of direction and purpose it has nurtured between the Executive and Legislative Branches on

counterintelligence, has essentially remove CI from the realm of pure partisan politics or parochial ideology and elevated to the level of bipartisan cooperation -- the level at which most results are most beneficial to the nation and its security.

WHAT IS COUNTERINTELLIGENCE, WHO DOES IT AND WHY

Before proceeding with this analysis, it would be helpful to clarify what we are talking about when we say Counterintelligence (CI) and why the US needs such a capability.

Executive Order 12333, United States Intelligence Activities, 4 December 1981, defines counterintelligence as follows:

...information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage or assassination conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.

While this definition appears simple and straight forward, counterintelligence is actually an extremely complicated enterprise involving many activities and actions. As may be clear from the definition, its primary goal is the successful detection of espionage or other activities listed and the use of methods available to the counterintelligence services or the broader government to effectively end the activity or manipulate it on terms favorable to the United States. While important adjuncts to effective counterintelligence program, information, physical and communications security programs are more appropriately

labeled "countermeasures" and are not the responsibility of US counterintelligence agencies.

In general, there are three complimentary functions performed by US counterintelligence agencies to pursue their mission: investigations, offensive operations and collection/production. Investigations are the most familiar to Americans and involve the effort to investigate the crime of espionage and develop evidence to build a case for prosecution. The clandestine nature of espionage makes investigation extremely difficult in the absence of hard evidence. Also included under the investigative functional element are two 'defensive' programs designed to protect against what a foreign intelligence service may do based their method of operation. The first program involves the use of 'defensive sources', or persons that have been briefed on the indicators of espionage and are tasked by a US counterintelligence agency to report situations they observe that might indicate espionage for further investigation. The second, and arguably most important defensive program is the counterintelligence awareness briefing programs. These briefings advise US citizens (and potential espionage targets) on the recruitment techniques used by foreign intelligence services and solicit their cooperation in reporting suspicious activity to an appropriate

authority for investigation.

The second function, operations, directly target a foreign intelligence service for several possible objectives. Operations may be used to recruit "agents in place" or to induce the defection of a foreign intelligence officer.(9:76) Either result can be devastating to the operation of an intelligence service. Secondly, operations may use double agents, loyal Americans who pretend to commit espionage, to gain intelligence on the method of operation of a foreign intelligence service or to disrupt the intelligence activities of a particularly effective foreign intelligence officer. In the latter case, double agents were particularly effective in 1986 netting Alice Michaelson, a courier for the East German Intelligence Service, Colonel Vladimir Izmaylov, Soviet Air Attache in Washington, and Gennady Zakarov, a Soviet UN employee and KGB officer -- all caught in the act of espionage.(37)

The final function is collection and production -- the glue that holds the entire effort together. Here, all the information that is known about a foreign intelligence service is analyzed in an attempt to develop trends in operational activity, leads for investigation or possible scenarios for offensive operations.(28)

Once the espionage activity has been detected using

one of the functions describe above, effective action against the activity can take several forms including: arrests and criminal prosecution of the espionage agent or the intelligence officer; diplomatic sanctions against the intelligence officer; or, further counterintelligence operational activity depending on the circumstances and the benefits to be derived.

By statute and Executive Order, US counterintelligence responsibilities are divided among the Federal Bureau of Investigation, the Central Intelligence Agency and the Department of Defense. The FBI has primary CI responsibility in the United States and the CIA overseas. Within the Department of Defense, operational CI responsibility belongs to the Army Intelligence and Security Command (INSCOM), the Naval Security and Investigations Command (NSIC), and the Air Force Office of Special Investigations (AFOSI). The Defense Intelligence Agency (DIA) has responsibility for some CI analysis and the Office of the Secretary of Defense has policy and operational oversight responsibilities for all DoD CI activities. DoD CI activities in the United States are conducted jointly with the FBI. Overseas, they are conducted in coordination with the CIA.

As a national security issue, counterintelligence for

most Americans is an absolutely essential function of the government -- few would argue the need for a viable CI capability. The techniques of counterintelligence, however, particularly when used in the United States, can be viewed as intrusive and not particularly welcomed as the clandestine nature of espionage increases the need for secrecy. Intrusive techniques, secrecy and the use of clandestine source all have an aura of "Big Brother" -- an aura that Americans often fear from their government.

The fear of Big Brother notwithstanding, the need for an effective counterintelligence capability is clear when one understands the nature of the foreign hostile intelligence threat facing the United States -- particularly the threat from our major adversary, the Soviet Union.

THE INTELLIGENCE THREAT TO THE UNITED STATES

The intelligence threat to the United States comes primarily from the Soviet Union and its Warsaw Pact allies. Within the Soviet Union, there are two agencies engaged in foreign intelligence collection -- the Committee for State Security (KGB) and the Chief Directorate for Intelligence, Soviet Armed Forces (GRU). The KGB which also has considerable responsibility for internal security in the USSR, engages in political, economic, scientific and technological intelligence collection as well as covert political influence operations, referred to as "active measures". The GRU is the intelligence arm of the Soviet Armed Forces and engages only in foreign intelligence collection. In addition to the intelligence services of the USSR, those of the Warsaw Pact and Cuba support Soviet intelligence collection activities around the world in general and in the US in particular. Combined, their capabilities represent a formidable challenge. Like those services, other country services conduct intelligence operations against the US, however, they do not present the same level of threat as does the USSR and its allies. (9:23-28)

The threat from our adversaries' intelligence services are both human and technical; however, the primary focus of counterintelligence has been the human intelligence threat.

While there have been great improvements in the technical collection capability of all countries around the world, "...the human agent continues to be the most important key to satisfying a nation's intelligence needs."(9:29) Reliable human spies are able to interpret intentions and feelings that technical intelligence cannot. If well placed, a human source cannot be deceived as can the most sophisticated technical intelligence collection system.

The recruitment and handling of human agents are the responsibility of an intelligence officer. Such officers work from official permanent establishments of their countries -- Embassies, Trade Delegations, Commercial Offices -- or from official temporary offices and delegations -- negotiating teams, visiting scientists or exchange students -- or from illegal operations. There is no shortage of places and people in which our adversaries may hide their intelligence officers.(37)

In October 1985, Judge Webster, the FBI Director, reported to the Senate Government Operations Subcommittee on Investigations that "there are over 4000 diplomatic and commercial officials from communist countries posted in the United States..."(23:6-9) According to another FBI publication on the espionage threat in the United States, the current number of communist country officials is a 100% in-

crease over the number of officials assigned to the US in 1972 (23:6-9), when President Nixon's policy of detente signaled the relaxation of tensions between the free and communist worlds. Judge Webster and other senior US counterintelligence officials have repeatedly concluded in official statements that roughly one out of every three Communist country officials assigned in the US is either an intelligence officer or performs functions which support intelligence operations. (23:6-9) In addition to the officials permanently assigned to the US, annually some 15,000 students studying at US universities and more than 90,000 visitors from these countries come to the United States for varying periods of time. (28) While the exact numbers are classified, a significant percentage of them have been identified as intelligence officers or have been tasked to perform intelligence missions in addition to their official reason for visiting the US. (37) If this were not enough, intelligence personnel have been identified in the flood of immigrants into the US from Communist countries. These people, along with the deep cover "illegal" officers, present a particularly difficult detection problem for US counterintelligence agencies.

The intelligence attack against the US from the USSR and its allies is systematic and pervasive. Their intel-

ligence officers are no longer the roughly dressed, ill-spoken drunks of the 1950's, but a sophisticated, well dressed, articulate and bright individual that represents the elite of Soviet society. These people blend into a cosmopolitan environment very easily and are difficult to detect even by the most experienced counterintelligence officer. Add to this the open nature of US society, which makes the job of the intelligence officer easier, and you have a very complicated task for counterintelligence people who must detect and counter their espionage activity.

COUNTERINTELLIGENCE IN A DEMOCRACY -- INSTANT TENSION

Few Americans, if any, would disagree that America needs the finest counterintelligence capability in the world to protect our national security from foreign espionage. In general, Americans believe that espionage against the US is a terrible crime, one that attacks the very foundation of our society, our people and our way of life. Spies are traitors and treason is an indefensible act that should be punished harshly and swiftly.

Yet for all the support one finds for an effective counterintelligence capability, its association with secrecy and the dark and sinister world of spying and treason make the people it is designed to protect fearful and distrustful of its existence and activities. This love-hate relationship is exacerbated by the intrusive techniques, such as electronic and physical surveillance and confidential sources, that counterintelligence uses to attempt to detect and stop espionage. Such techniques are normally only allowed in a democracy when competent judicial authority has determined in a public forum that there is probable cause that a crime has been committed and that such a technique is required to obtain the evidence needed to prosecute a crime.

While the product of counterintelligence activity may

be used for prosecution, it may also be used for a range of other activities that are designed to counter the espionage activity. Because it is not solely a law enforcement activity, the rules of law enforcement which guard the rights of the public and the criminal, may not always apply neatly to counterintelligence activity. Certainly, the open judicial forum for the approval of the use of intrusive techniques could compromise sensitive counterintelligence operations before it begins and render the activity useless.

One last factor that heightens the tension between counterintelligence and the people in a democracy is the tension between the requirements of national security and basic individual rights. US counterintelligence is literally in a daily war with the intelligence services of our major adversaries. The war is waged to protect our democracy from threats to its security from elements that would steal the secrets upon which our defense and security are based. Given the unrelenting attack on our nation, it is not difficult for very responsible individuals to want to use all available means to stop foreign directed espionage -- even if these means begin to infringe on the rights of some of our own citizens. The thought is not to harm individuals but to protect the nation and our way of

life. On the other side of this understandable drive stands the rights of our citizens -- rights that are guaranteed in the Constitution and rights that have been preserved in the blood of brave soldiers on the battlefield. Americans fervently guard those rights and are generally reluctant to relinquish them for any but the most threatening reason such as imminent attack. Espionage does not provide that loud signature that it is occurring or that its fruits in any way threaten the nation or its people. It is not a persistently clear and present danger and therefore not one for which US citizens will readily sacrifice their rights.

In order for counterintelligence to be effective in a democracy, it must manage the inherent tension between its important work and the rights and values of the society it is attempting to protect. Counterintelligence, therefore, must be covered by rules, standards and some outright prohibitions. Such limits are essential to protect the civil liberties of citizens while allowing counterintelligence to pursue its mission. Under our Constitutional system, those limits can be translated into laws which establish authority for or the public policy that allows the conduct of certain activities. Laws and other limitations do not eliminate the tension, but rather help to manage it more effectively to the benefit of national security and

the individual rights of our citizens.

The alternative to this type of management of the tension is not a pleasing one to most Americans. The former Director of the CIA, Admiral Stansfield Turner, explained the problem in a 20 June 1985 article in the Baltimore Sun:

The dilemma of how an open, democratic society should carry out and control secret intelligence operations has been a recurring issue in American public life. At one time many Americans probably agreed with the Senator who declared he "would rather not know" about Central Intelligence Agency secrets. That mood, however, made possible the abuses that began to be revealed in the 1970s, including illegal spying on Americans...

The dilemma outlined by Turner is at the essence of how our national security policies and objectives are to be developed. There is Constitutional history that would indicate a desire by the framers that national security policy be made cooperatively by the legislative and executive branches of our government. I want to briefly outline the Constitutional argument for legislative and executive cooperation in matters of national security.

Our Constitution created one of the world's most inefficient systems of government. By separating powers and creating a system of checks and balances, the Constitution insured that no one branch of government would be pre-eminent or could function without the cooperation and assistance of the others. In the Constitution, the Congress

was vested with "all legislative powers herein granted;" the President was to exercise the "Executive" power. In other words, Congress was to make the laws and the President was to ensure they are faithfully executed. (22:287)

Over the course of the last two hundred years, these clear lines have faded considerably:

Separation of powers was an article of faith. The principal that different and separate branches of government should exercise different and separate functions provided the outline which they followed in drafting the Constitution, though the powers separated in principal emerged substantially mixed in fact. (22:286)

Over the years, it has become evident that for our governmental system to work most efficiently, the President and the Congress must share power as each represents the whole and the parts of the nation as it attempts to grapple with serious problems of national security. Our democracy is not well served when such cooperative power sharing and coordinated policy development does not occur:

The stakes are too high for a democratic society to tolerate either a Presidential fiat accomplished or a Congressional fiat delivered to an unwilling President. We need processes that will bring to bear wisdom as well as expertise and the authentic consent of the governed. The original Constitutional plan, the lessons of intervening history and our kind of democracy all call for Congressional involvement... (22:309)

The need for such cooperation, what can happen when it is absent and conversely the benefits that can derive when cooperation occurs is amply demonstrated in the development

of US counterintelligence capability. The history of the development of that capability, its triumphs and trials are replete with examples of the tension between counterintelligence and individual freedoms; how the delicate balance can be easily upset if we are not careful to maintain appropriate limits; the value of public consent and Congressional support for counterintelligence activity; and the solid counterintelligence capability that can derive in a cooperative effort between the Executive and Legislative Branches on issues of national security.

To analyze these factors, I have chosen the framework developed by Loch Johnson in his book, A Season of Inquiry, a volume widely considered the most definitive account of the developments during the 1975-76 Senate hearings on US Intelligence activities. This book concentrates primarily on the hearings but also describes three phases in the Executive-Legislative relationship regarding intelligence and counterintelligence matters: Phase 1, The Era of Trust (1930-1972); Phase 2, The Era of Skepticism (1972-1977); and Phase 3, The Era of Uneasy Partnership (1978-88). Although I have altered the dates of Johnson's phases to better reflect the history of counterintelligence, this framework still provides an excellent point for analytical departure. We will discuss for each phase, the nature of

the threat facing America; the source of the authority for counterintelligence activities and the degree of Congressional involvement in and public support for counterintelligence activities; and the relative capability of US counterintelligence to perform its basic mission as outlined above.

THE ERA OF TRUST (1930-1972)

The Era of Trust began when the first elements of the present day US Intelligence Community (note 1) was established in the 1930s. As far as counterintelligence is concerned, its modern roots can be traced to the mid-1930s when President Franklin Roosevelt became concerned about actual and possible German and Japanese subversive activities in the United States. Based on this concern, Roosevelt asked the FBI to investigate possible incidents of foreign directed subversion.(1:7) As the nation drew closer to war in 1939, the President formalized his earlier orders by issuing a directive related to the investigation of espionage, counterespionage, sabotage and Neutrality Act matters to the FBI and certain military intelligence agencies. Later, in September 1939, he publicly charged the FBI with primary responsibility for the investigation of these matters and directed that all information gathered on these subjects be shared with the FBI.(12:18)

At the time of President Roosevelt's orders, there was great public concern over the events in Europe and the Pacific; hence, there was a groundswell of public support for government efforts to protect the US from potential foreign directed activities. In Congress, there was also support for the President's actions and there was little

debate on his authority to take such action based upon his Constitutional responsibilities. In essence, there was general consensus throughout the government and the public that a potentially dangerous situation was present and that there was a need for the government to take definitive steps to handle the problem.

The widespread public sentiment and Congressional support for effective counterintelligence continued after the war. The activities of the Soviet Union in the latter stages of the war and after its end eroded our wartime alliance and identified a new and potentially more threatening foe. The Berlin Crisis and the Korean Conflict heightened tensions and contributed to the Cold War of the 1950s, the policy of "containment" and the general "Red Scare" that gripped America. Anything and anyone associated with communism or "communist fronts" were considered threats to be neutralized in order that they would not threaten our nation and the free world. The Executive, the Congress and the people were all unanimous on the communist threat and the need for broad powers to the US counterintelligence agencies to investigate communist efforts to infiltrate the US and destroy our system of government. The success of the FBI and other US counterintelligence agencies in detecting communist spies and uncovering

"communist plots" fueled the public perception of the threat and the need for vigilance. By 1961, J. Edgar Hoover could sum up the general feeling in America when he said:

The international communist conspiracy, an avowed enemy of the democratic system of government, is constantly assaulting the nation with its spies, its propaganda and its domestic adherents. Identifying its operations and penetrating and destroying them are the main counterintelligence objective of the FBI. (4:19)

One could easily derive from Hoover's statement that the communist conspiracy was behind most efforts to change our democratic system. Clearly, his efforts to prove this connection to the Civil Rights Movement and later the Anti-War Movement demonstrates the depths of his feelings on the issue. It is not surprising then that in the early 1960s when the President asked the FBI to become involved in the investigation of and intelligence gathering on these movements and other domestic extremist organizations, that the same techniques used against foreign elements would also be used against the US citizens involved in these movements. As a result, as the Era of Trust drew to a close, counterintelligence became synonymous with domestic intelligence and the techniques of counterintelligence were used with equal fervor against domestic political groups as well as foreign directed organizations and activities. Several examples were evident:

--The FBI's Counterintelligence Program (COINTELPRO) first began in 1956 and ended in 1971. The program was designed to detect and disrupt the activities of elements that were considered security threats. Of the seven targets of this program, two were communist bloc intelligence services or espionage activities; one was against the Moscow aligned Communist Party of the USA and the remainder targeted other domestic US organizations and movements. (4:20);

--The FBI's effort to "neutralize" Martin Luther King Jr. as the head of the US Civil Rights Movement and to select an "Acceptable" black American to replace him. (3:127-128);

--The CIA's conduct of surveillance on US citizens in contravention of its legislative charter;and

--The US Army's surveillance and reporting on American citizens involved in dissent against government policies.

That the US Government needed to be concerned about the dissent and unrest that the country experienced during the late 1960's is not in question here. The real question is the limit of government action to protect the nation when that action infringes the rights of its citizens. During the Era of Trust, there appeared to be no limits. The counterintelligence services dictated the threat and the techniques used to counter it:

Former top officials of the FBI and CIA had acted on the assumption that they could disregard the legal rights of domestic groups because their work was so important to national security that they were not governed by the legal and constitutional standards applying to the rest of the law enforcement community. (1:6)

Not only did these agencies dictate the limits of

their authority during this Era, but the Executive Branch and the Congress failed to exercise their constitutional prerogatives to oversee and set policies for these actions. As an example, the General Accounting Office (GAO) concluded that the Justice Department had exercised virtually no policy direction over the FBI during this period and provided direction only when requested by the FBI.

(12:XVII)

Congress, too, allowed the trust it had built in the US counterintelligence community over the years to limit its active oversight involvement. They saw intelligence and counterintelligence as important to the nation's survival and did not want overly critical oversight to possibly compromise sensitive operations and sources. Intelligence professionals were considered "honorable men" in the service of a grateful nation. Because of their honor, they would not exceed their authority and abuse their special responsibility and authority. (3:7)

By the end of the Era of Trust, US counterintelligence had shifted its primary attention from the foreign intelligence threat to domestic dissent and its possible connection to the "international communist conspiracy." Counterintelligence became almost synonymous with domestic intelligence and its techniques were used to gather informa-

tion and sometimes disrupt legitimate protests against government policies. The concentration of US counterintelligence on domestic problems took much needed attention away from on-going foreign hostile intelligence activity designed to steal US classified information. We should remember that at the height of the domestic dissent in the US over Civil Rights and the Vietnam War, there was also a concerted effort to establish "Detente" with the Soviet Union. During that period, most experts agree that Soviet and Warsaw Pact Intelligence services significantly increased their intelligence operations in this country. There were more foreign intelligence officers, yet , US counterintelligence was paying less attention to them because of their concentration on domestic dissent.

While there was significant manpower and resources available for counterintelligence, it was not being used effectively against its intended target -- foreign intelligence services. By the end of the Era, law-abiding citizens had been targeted for surveillance, investigation of their private lives and personal beliefs and even covert action to discredit and disrupt their political activities. Presidents, Attorneys General and the Congress bore major responsibilities for allowing the US counterintelligence reorientation from foreign threats to domestic intelligence

and security.(1:21) The revelations of intelligence agency abuses, as well as other developments, led Americans to fundamentally question long-held beliefs about our government. This questioning meant a loss of popular support and consensus for US intelligence and counterintelligence activities. This fact led to an eventual end to the Era of Trust and ushered in the next Era of Executive-Congressional interface on counterintelligence matters -- the Era of Skepticism.

THE ERA OF SKEPTICISM

While I call this the Era of Skepticism, perhaps a better description is the Era of Confrontation. The skepticism that launched the era gave way in the end to major confrontation between the Executive and the Congress over the issue of control of the nation's intelligence and counterintelligence capability and over the Constitutional limits of Congressional oversight of the Executive Branch on issues of national security policy.

The skepticism that characterizes the early phases of this period stems from several factors which shook the very foundation of the American people's trust in the wisdom of our government and its top officials. The first event has to be the Vietnam War, in general and the 1968 TET Offensive, in particular. TET, for a number of divergent reasons, shook the confidence of the American people about the credibility of the government in explaining and justifying our involvement in Vietnam. The Anti War movement, which gained momentum in the aftermath of TET, increased the crescendo of popular criticism that had begun under the Civil Rights Movement a decade earlier. Assassinations, riots in our cities and massive dissent on our college campuses caused many to question the fundamental beliefs and time-held truths about our society.

Next to Vietnam and Civil Rights, was Watergate and the disgrace that incident brought to a sitting President. Again, questions about the nature of our governmental institutions and how they function were widespread. (2:12-13) Watergate also brought the Congress into open and sometimes hostile confrontation against a weak Presidency and allowed the Congress to assume greater prominence and power vis a vis the Presidency. Finally, the revelations about possible intelligence, counterintelligence and law enforcement abuses of authority and questionable practices began to surface as a sidelight to the other major political upheavals. Allegations of Army surveillance of civilians during the anti-war period became public in January 1970 and the issue played on and off the front pages of our major newspapers for almost five years. As early as 1971, Senator Sam Ervin's Subcommittee on Constitutional Rights held extensive public hearings on Army surveillance of civilians. (1:4) Later, events leading to the resignation of President Nixon revealed abuses of authority by members of the US intelligence community at the request and direction of the President or his personal staff. After Nixon's resignation, Attorney General Saxbe released a report on the FBI's COINTELPRO operation which resulted in a tremendous public outcry. The final straw in this stream of

revelations about alleged abuse of authority by the Intelligence community occurred in 1974 when the New York Times made headlines with its revelation of CIA domestic spying on US citizens in violation of its 1947 Charter. (13:3-4)

These revelations collectively set in motion a confrontation between the Executive Branch and the Congress over the need for a Congressional inquiry into the alleged abuses; the limits of a public investigation and the authority of Congress to compel the Executive Branch to cooperate in an investigation by compelling the Executive Branch to provide testimony and documentary evidence; and the limits of the President's authority and capacity to control the US intelligence community. The confrontation was a bureaucratic struggle for turf and neither side wanted to lose without a significant struggle.

In spite of their bureaucratic rivalry, both the Executive Branch and the Congress were attempting to respond to widespread public concern over allegations of abuses by the US intelligence community; to identify the facts; to assess the viability of the management structure; and to institute improved systems and procedures so that such abuses would not occur again. Each branch used different fora to respond to public concern, each with different results.

The President moved first with the Rockefeller Commission on CIA Activities in the United States. During the course of the Commission's deliberations in 1975, the Vice President and his commission essentially concluded that the CIA had done certain domestic spying and surveillance; that there were statutory ambiguities with regard to the permissible limits of CIA activities in the United States; and that there was a need for new Executive and Congressional oversight mechanisms over the activities of the CIA. (13:3-4) Later, in 1975 and 1976, The Senate (Church) and the House (Pike) Intelligence Review Committees went much further in describing the problems they discovered in the intelligence community. According to Senator Church, the "government's intelligence services had operated as 'independent fiefdoms' telling neither the Chief Executive nor anyone of their illicit activities." (3:86) In the final analysis, the consensus of the Congressional committees was that "... for thirty years the Congress, the President and the Justice Department had failed in their responsibilities to supervise... Moreover, legislative guidelines -- particularly in the form of law -- were ...conspicuous by their absence." (3:152)

As a result of the hearings, both Committees recommended and their respective Houses approved the estab-

lishment of permanent intelligence committees to provide Congressional oversight of the national intelligence effort. The Committees' role would be primarily to review and authorize the national intelligence budget and approve covert actions. Additionally, the committees would recommend policy options for the President in the future use of the US intelligence capability for national security purposes. (13:9)

The Era of Skepticism and Confrontation had bared unmercifully the soul of the nation's intelligence services. It had not been an easy period for the government or the American people as the daily revelations from the hearings and other 'leaks' told story after story of improper actions in institutions that just five years earlier had been highly revered by Americans as models for the world. Not surprising, the results of this Era were both positive and negative.

Despite the efforts of both the Executive Branch and the Congress to limit the impact of the hearings and investigations on on-going intelligence and counterintelligence activities, the effort was futile. The ability of US intelligence to promise anonymity to sources and to protect sensitive methods was severely shaken and therefore its credibility around the world diminished considerably. No

one who cooperated with a US intelligence agency could be assured that cooperation would not be front page news. The impact on secret intelligence and counterintelligence operations is evident -- information and operations dried up very quickly thus greatly diminishing the quantity and quality of intelligence and counterintelligence data available to the US Government. (37)

Perhaps more important to our long-term US intelligence and counterintelligence capability was the negative impact of the Era on the morale of the men and women of the US intelligence community. The honor of their profession had been dragged through the mud and, even worse, several of their brethren had been threatened with or actually prosecuted for ordering or conducting actions that had been done for national security reasons. A career in the intelligence or counterintelligence services of the US was not a popular prospect in the mid-seventies.

In addition to low morale, there was a conscious effort to trim the size of the intelligence community to demonstrate a re-establishment of control by the Congress and the White House. Consequently, between 1976 and 1980, the FBI lost some 800 Agents in budget cuts. (19:7) Similarly, in 1977, CIA Director Stansfield Turner's infamous "Halloween Massacre" removed hundreds of experienced

officers from the CIA's clandestine services.(4)

The result of all these factors was a community in complete disarray and finding it increasingly difficult to perform its primary intelligence and counterintelligence missions. Additionally, the sting of past criticism made those that did remain extremely cautious in their activities as there was no self-evident indication that positive support would be provided should the activity be publicly exposed. Public and Congressional support for intelligence was at an all time low and the people involved in it knew it.

The negative aspects of this Era notwithstanding, there were also many positive developments which bode well for the future of the US counterintelligence effort. The Era provided a new direction for US counterintelligence, refocusing the effort on foreign intelligence services and away from domestic internal security issues.(1:28) Probably, most important, President Ford's Executive Order 11095 of 1976, began the process of defining counterintelligence and its mission.(34)

Not only did the Era see the first real definition of counterintelligence, but it also brought forth the first ever coherent legal framework for the conduct of counterintelligence in the United States. This framework was set

forth in the Guidelines established by Attorney General Levi pursuant to Executive Order 11095. (1:37-39) While these guidelines were intended specifically for the FBI, they have served as the conceptual underpinning for the operation of the entire US counterintelligence community.

Executive Order 11095 also established the other structural precedents that would girder the future development of the US intelligence community in general and counterintelligence in particular. It established the primacy of the National Security Council for the execution of policy control over the intelligence community. It also made the Director of Central Intelligence the President's chief advisor on intelligence matters. Finally, 11095 created an NSC Committee on Foreign Intelligence, chaired by the DCI and responsible for the control of budget preparation and resource allocation as well as management policies and the execution of NSC policy decisions involving the US intelligence community. Clearly, authority and control over US intelligence activity had been re-established in the White House under EO 11095.

Finally, despite the rhetoric and political grandstanding, the Era had demonstrated that the Congress could work with the Executive Branch on matters of sensitive national security. The hearings and negotiations had

established a procedural example of how discussions between the two branches could proceed. The precedent established by the Church Committee (the experience of the Pike Committee was considerably different because of the committee's confrontational approach) planted the seeds for the cooperation, at least in counterintelligence matters, that continues to flourish today.

In sum, while certainly there were not insignificant negative aspects to the Era, these aspects were offset somewhat by the positive procedural and framework benefits that derived. Admittedly, the initial Guidelines and other controls were very stringent and therefore made some reluctant to venture out; however, there was a rudimentary framework developing in which those problems could be discussed and eventually resolved. The process was a slow one, but its beginning leads us to the Era of Uneasy Partnership.

THE ERA OF UNEASY PARTNERSHIP

This Era has two distinct phases. One commences with the creation of the Congressional Intelligence Oversight Committees. This phase continued the bureaucratic confrontations and turf battles that occurred in the previous Era, but also sees the seeds of future understanding and cooperation planted and begin to nurture. The second phase begins with the election of President Reagan. Here, both the Congress and the Executive Branch become more confident of the new institutional relationships and begin a process that concentrates more on the needs of national security than on bureaucratic rivalry. In this latter phase, US counterintelligence capabilities begin a slow but steady healing process from the decimation of the previous Era.

The first phase of this Era begins when Senate Resolution 400, 94th Congress (1976) was approved after heated debate and a Senate Select Committee on Intelligence (SSCI) was established. The SSCI was given responsibility for all proposed legislation, appropriations, messages, petitions, memorials and other matters relating to all intelligence agencies of the US Government. As the Senate's single focus on intelligence matters, the SSCI was tasked to provide regular and periodic briefings to the full Senate on the extent of intelligence operations as well as an annual

report on the activities of all US intelligence agencies and the activities of foreign countries directed against the United States. A House of Representatives Permanent Select Committee on Intelligence (HPSCI) was established in June 1977.

The creation of these two committees served notice that the Congress was serious about exercising its responsibilities for oversight of the intelligence community; in putting to the process of developing national intelligence policy; and developing a legislative underpinning for the intelligence and counter-intelligence activities of the US. Both Houses selected members for these Committees that were experienced in intelligence matters. For example, the first SSCI had Senators Huddleston, Goldwater, Gary Hart and Charles Mathias, all seasoned veterans of the earlier Church Committee. Much of the senior professional staff of the new committees was also drawn from the earlier committees and they too were no novices in the business of intelligence.

With the creation of the oversight committees and the election of a new President in 1976, there remained tension as to which branch would exercise primary control over intelligence policy and activities. Both branches agreed there was a need for strong oversight, but the real ques-

tion was who would do it and how much. As time passed, the tension between these two competing centers waned as the need to improve counterintelligence capability became more and more evident.

One central premise that was true for both the Executive Branch and the Congress was that both were determined to effectively manage the tension between the need for a the US to protect itself by having an effective counterintelligence capability and the allowable limits of that authority in order to protect the civil liberties of American citizens. President Carter's Executive Order 12036 on intelligence activities provided that intelligence activities "... be responsive to legitimate government needs and must be conducted in a manner that preserves and respects established concepts of privacy and civil liberties." The acceptance by both Congress and the Executive Branch of this tenet and the need for oversight were the seeds of future cooperation and the eventual improvement of US counterintelligence capability.

As a result of this consensus, and previously passed laws and Executive Orders, the focus of US counterintelligence returned to the foreign intelligence services. Its mandate under Executive Order 12036 was " to protect against espionage and other clandestine intelligence ac-

tivities...conducted for or on the behalf of foreign powers, organizations or persons." (1:11) This new emphasis would begin a process where lost capabilities would be improved based on a clear understanding in the Executive and Congress that improvements were required and that these improvements would not infringe on the rights of US citizens. Two laws passed by the Congress in the latter part of the first phase of this Era demonstrate the cooperation and how it improved capability.

The first of these laws is the Foreign Intelligence Surveillance Act of 1978 which established a special court of seven Judges in Washington DC to review and approve requests from the FBI to conduct surveillance of foreign intelligence establishments, operations and personnel in the United States.(16) The Act helped resolve a troublesome legal issue about the use of intrusive surveillance techniques in the US and has led to much wider use of these effective techniques in counterintelligence activities. It is ironic that initially, the FBI was opposed to such legislation as they felt it layered the President's inherent authority to issue an order in support of national defense. Now, according to Judge Webster, FISA has been "...a tremendous assistance to us...The FISA Court has never turned us down except in one case..." (28:12)

The second law, the Classified Information Procedures Act (CIPA), October 1980, commonly referred to as the "Greymail" statute also derived from a counterintelligence problem that could not be resolved solely by Executive Order. Prior to the law's enactment, the government had been reluctant to prosecute persons with sensitive clearances for espionage for fear that sensitive classified information would have to be revealed in open court. The CIPA established a procedure for a trial judge to rule on the relevance of classified documents to the proceeding outside of open court. The procedures eventually led to a 180 degree turnabout in the US Government's policy on the prosecution of persons charged with espionage. With the law, classified information could be protected along with the rights of a defendant. The balancing of these two competing requirements expanded the counterintelligence options available to the United States.

In considering the cooperation that began to develop between the Congress and the Executive on counterintelligence, one must not forget how much recognition of the threat from foreign intelligence services played a major role. Two espionage cases in the late 1970's made all Americans recognize the threat to our technical intelligence systems from foreign human intelligence collection.

In 1977, Chris Boyce and Andrew Lee were arrested for espionage in compromising CIA intelligence collection technology and capability. Later, in 1978, William Kampiles was arrested for selling the technical manual on the then state-of-the-art US intelligence collection satellite, the KH-11. Both cases, each involving US citizens with access to sensitive data who volunteered their services to the Soviets, demonstrated that detente had not diminished the intelligence threat from our adversaries and that an ineffective counterintelligence capability to protect against such espionage not only jeopardized our national security but also potentially wasted billions of dollars of research and development of technology that could be rendered ineffective by one human spy. The message was clear to both the Congress and the Executive that improvements had to be made to improve US counterintelligence capability. The real drive for these improvements came in 1980 with the election of Ronald Reagan as President.

The seeds of cooperation that were nurtured in the first phase of this Era took root and began to blossom when President Reagan's inauguration began the second phase of the Era. The President had won the election on a commitment to rebuild American strength, including US intelligence capabilities. His commitment was supported by a Republican

majority in the Senate and a wave of conservatism in the House of Representatives. A consensus developed which was supported by widespread public sentiment that America's intelligence capability had been severely degraded and needed immediate attention to restore the capability.

In pursuing its promises, the Administration conducted numerous studies of all aspects of the US national security structure. Based on the results of those studies, recommendations were implemented to improve identified deficiencies. As far as counterintelligence was concerned, the actions of the Administration had several results. First, the President's unwavering anti-Communist stand made it clear that Soviet and Warsaw Pact espionage against the US was not to be tolerated and that all resources would be concentrated on detecting and countering such activity. While there had been past support for counterintelligence among the US Government leadership, no one had been so open and forthright as President Reagan in leading the charge.

Second, the President completely revamped the National Security Council policy making apparatus to ensure inter-agency coordination and effort on matters of counterintelligence. (37) Ultimate responsibility for counterintelligence policy was concentrated in the NSC and an experience counterintelligence expert was assigned to the NSC

Staff to coordinate matters at that level. Policy coordination and development was enhanced with the creation of the Inter-agency Group -Counterintelligence (IG/CI). This forum, headed by the Director of the FBI and containing representatives from all US agencies that conduct, coordinate or have oversight responsibilities for US counterintelligence. The IG/CI provided a much needed forum for agreement on new initiatives and the development of coordinated policy to handle the intelligence threat. (9:58)

Third, the President provided the budgetary support required to make the new policy recommendations a reality. The Director of Central Intelligence was given primary responsibility for preparation and presentation of the National Foreign Intelligence Program (NFIP) budget to the President and Congress, thus focusing both policy development and resource allocation under him in the intelligence community.(18) Additionally, the Congress could look to one official as the responsible person for developing and managing US intelligence and counterintelligence capability -- a fact that allows them to place accountability for activities.

The Reagan Administration's commitment to rebuild American strength was supported by Congress, particularly with regard to budgetary support for improved resources for

US counterintelligence. The precise amounts of increased manpower and resources devoted to counterintelligence since 1981 are classified. However, a review of the unclassified Intelligence Authorization Acts for Fiscal Years 1978 to 1988/89 clearly shows that beginning in Fiscal Year 1983 and continuing through 1988/89, the Congress consistently appropriated "major investments" for improvements in US capabilities to counter foreign espionage.(17)

Almost as important as the Congressional support for the budgetary improvements has been several policy initiatives designed to improve the capability to counter the espionage threat. There are two examples -- one a law and the other a policy position -- which merit mention.

The law is the Foreign Missions Act of 1982. This Act greatly improved the ability of the US Government to control the movements around the U.S. of diplomats from certain foreign countries known to be involved in espionage against the US. The law centralizes responsibility for approving and managing the travel and lodging requirements of diplomats of certain nations around the US. Under this program, the US Government can now monitor the movement of diplomats and investigate inappropriate activity that may occur during such travel. While there are many other aspects to this complicated law, the bottom line is that it

greatly enhanced the ability of US counterintelligence agencies to monitor the movement and activities of foreign nationals, especially intelligence officers, as they move around the United States on official and intelligence missions.(37)

The second initiative was to reduce the presence of intelligence officers in the United States by limiting the number of diplomats from communist countries that could be assigned. The initiative included a limitation on Soviet employees at the United Nations. It is ironic that the State Department was opposed to such action and was able to defeat the initiative until public revelations of Soviet espionage against the US at the UN and in Moscow enraged the Congress and the American people in 1986/87.(37)

By the end of 1984, the relationship between the Congress and the Executive Branch on matters of counterintelligence had come full circle from the mid-1970's. By then, eight years of cooperation and experience had brought tangible improvements to US counterintelligence capability. While it is difficult to precisely measure improvement in an unclassified paper, there is one barometer that may be of help. The barometer measures the number of people arrested and convicted for espionage over the period from 1965 to present. The figures cover the three Eras of

Congressional-Executive Branch cooperation on matters of counterintelligence:

	65-75	75-80	80-Pres
Military Court-Martial	9	1	24
Federal Court	0	13	52
Total	9	14	86

(Source: 35)

While statistics can be read in many ways, arguably such increased prosecutions and convictions could be attributed to the greatly expanded foreign intelligence activity of our adversaries. While that may explain some of the increase, the level of foreign intelligence activity does not explain the effectiveness of counterintelligence agencies in detecting and neutralizing the activity. Increased counterintelligence capability results in increased success in stopping espionage. Clearly, with increased resources and improve capability, the numbers of people arrested and convicted for espionage has increased dramatically. The enhanced resources and other policy improvements that occurred over the last few years have refocused US counterintelligence on the real danger to national security -- the foreign intelligence services. This refocus has allowed US counterintelligence to concentrate on its primary mission of detecting espionage and neutralizing it with the techniques outlined earlier. In explaining the FBI's current

approach to the conduct of counterintelligence, Judge Webster outlined the prevailing sentiment in the US counterintelligence community:

By creating a spider web, using both physical and electronic surveillance, and using all the modern techniques...we can create a spider web barrier that is impossible for these hostile intelligence officers to make contact with our citizens. We are making it impossible for American citizens who wish to betray their country to make contact with hostile intelligence officers without our having some indication of it...This is the only way for us to proceed. To do otherwise...would put us in a police state mentality and would tend to have us focus inward...rather than focus on the enemy. (28:7)

US counterintelligence is now solidly focused on the real enemy and it has been given the policy and resource support to focus sufficient effort while not infringing on the rights of our citizens. The tension that was one evident between the Executive Branch and the Congress on US counterintelligence activities during the Era of Skepticism has subsided and a growing partnership is developing. The publicity from the "Year of the Spy" on the failure of US counterintelligence notwithstanding, the evidence is that US counterintelligence has improved considerably since the "Year of Intelligence" and that future improvement can be assured assuming continued cooperation between the President and Congress in developing US policy on this important issue.

CONCLUSION

May 1985 began the "Year of the Spy" and the subsequent flurry of arrests released a torrent of public speculation on the capability of the^e United States to protect itself from espionage. The underlying issue was how capable US counterintelligence was to perform its mission. Responding to widespread public concern, the Department of Defense, the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI) all launched exhaustive studies of US counterintelligence and security capabilities, problems and future needs. Each of these major efforts reviewed all aspects of the US Government's efforts to protect itself from espionage. The reports of these committees are instructive on the state of US counterintelligence and the commitment of all branches of the government to ensure the very best counterintelligence capability.

The DoD Commission led by retired Army General Richard Stilwell concluded that the counterintelligence capability of the DoD was basically sound and well managed. The vast majority of the Commission's findings and recommendations involved improvements in information, personnel and physical security -- all countermeasure and not counterintel-

ligence issues.(10)

While not as positive, the HPSCI also concluded that great improvements had been made in counterintelligence, especially in improved morale and numbers of personnel and operational and policy areas; however, they noted that "... historical inadequacies in counterintelligence and countermeasures are so deep seated and pervasive that fundamental problems remain." (7:1) When the committee went on to list the "inadequacies" all were again countermeasures and not counterintelligence matters.

The SSCI report summed up the real essence of all three reports:

The Committee believes that, as a result of significant improvements in recent years, the nation's counterintelligence structure is fundamentally sound, although particular elements need to be strengthened. (9:4)

The Senate report went on to state that it saw the need for a coordinated national CI strategy that integrated the work of the FBI, CIA, DoD, State and Justice and that the SSCI expected that document to play a major role in its oversight of counterintelligence for years to come. (9:4)

Each of these reports were compiled with the complete cooperation of the Executive Branch, in general, and US Counterintelligence, in particular. The level of cooperation and coordination was highlighted in the SSCI report:

The Committee received unprecedented cooperation from the President, the National Security Council Staff, the Intelligence Community staff and the many departments and agencies with counterintelligence and security functions...The Committee, in turn evaluated those ideas and submitted a comprehensive set of recommendations for Executive Branch consideration. (7:2)

US Counterintelligence sits poised for future improved capability in attempting to protect the national security from foreign directed espionage and other intelligence activities. This fact is made more evident by the nature of the partnership the Executive Branch and the Congress have developed regarding US counterintelligence capability. That relationship has dictated the past successes of US Counterintelligence as well as the ability of the government to manage the inherent tension between counterintelligence and the protection of the liberties and the rights afforded citizens of our democracy. This tension and its effective management will continue to dictate the future capability of the nation to protect itself from espionage. Representative Lee Hamilton, former Chairman of the HPSCI stated the need thusly:

There is committee consensus that we have excellent intelligence services supported by dedicated, skilled, patriotic professionals...We want a cost effective and responsible intelligence community, mindful of the privacy of our own citizens and able to give the right person the right information at the right time. The job of Congress is to provide adequate resources to meet that goal, and offer to the President the advice of an independent but supportive partner. In our sys-

tem of checks and balances, we have the opportunity and responsibility to do this work together. (21)

The debate on the limits of counterintelligence in a free society will never end -- indeed no democracy would want that debate to end. However, the debate and its result can be effectively managed in a partnership between the Executive Branch and the Congress. The fruits of that type of partnership has meant a significant improvement in US counterintelligence capability that spawned the Year of the Spy. Such cooperation is the same as that envisioned by the framers of our Constitution in the formulation of policies affecting the national security.

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NOTES

1. Throughout this paper, I will use the term "US Intelligence Community", which refers to all the agencies of the US Government involved in intelligence or counterintelligence activities. US counterintelligence is a sub-set of the broader intelligence community. While my analysis concentrates on US counterintelligence, the analytical Eras have equal meaning for the US intelligence community.